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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,646	04/16/2004	Bernd Wahle	C 28.27 US	2294
23657	7590	11/23/2009	EXAMINER	
FOX ROTHSCHILD LLP 2000 MARKET STREET PHILADELPHIA, PA 19103			KHAN, AMINA S	
			ART UNIT	PAPER NUMBER
			1796	
			NOTIFICATION DATE	DELIVERY MODE
			11/23/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@foxrothschild.com

### Office Action Summary

**Application No.**

10/826,646

**Applicant(s)**

WAHLE ET AL.

**Examiner**

AMINA KHAN

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37, 46-50, 53 and 55-57 is/are pending in the application.
- 4a) Of the above claim(s) 48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37, 46, 47, 49, 50, 53 and 55-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This office action is in response to applicant's amendments filed on July 14, 2009.
2. Claims 37,46-50,53 and 55-57 are pending. Claims 1-36,38-45,51,52 and 54 have been cancelled. Claim 48 has been withdrawn from consideration due to a non-elected group. Claims 56 and 57 are new. Claim 37 has been amended.
3. Claims 37,46,49,50,53 and 55 stand rejected under 35 U.S.C. 103(a) as obvious over Benisek et al. (US 4,448,817) in view of Lewis (US 3,933,421) for the reasons set forth in the previous office action.
4. Claims 37,46,47,49,50 and 55 stand rejected under 35 U.S.C. 103(a) as obvious over Lewis (US 3,933,421) for the reasons set forth in the previous office action.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 37,46,49,50,53 and 55-57 are rejected under 35 U.S.C. 103(a) as obvious over Benisek et al. (US 4,448,817) in view of Lewis (US 3,933,421).

Benisek et al. teach a method finishing keratinous textile articles, which meets the claimed limitation of laundry, for example wool fabrics, which comprises contacting by padding or exhaustion (column 3, lines 60-68) the articles with an anti-felt polymer for example isocyanate functional or bunte salt functional polymers of formula (II), specifically the aqueous composition Lankrolan SHR3 (column 2, lines 30-45), and a polymer of chlorinated ethylenically unsaturated monomer, for example polyvinyl chloride, polyvinylidene chloride, polypropylene, and dichlorobutadiene. Thereafter, the articles are treated with an anionic titanium or zirconium complex at low pH. Benisek teach in the examples that the padding can be followed by drying and no temperature limitation is giving for padding, so room temperature must be used, which meets the limitation of less than or equal to about 40°C. Textiles so treated exhibit both shrink-resistant and flame-retardant properties (abstract). Benisek et al. teach adding the composition within wide limits to the wool for the desired shrink resistance (column 3, lines 20-35).

Benisek et al. do not teach adding a surfactant to the treatment composition or the 25-45% compound of formula (II).

Lewis teaches treating wool and cotton fabrics to impart shrink resistance (abstract) with similar bunte salts (column 3, lines 40-55) at room temperature wherein the compositions may comprise surfactants (column 8, lines 35-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the methods of Benisek et al. by incorporating the surfactants of Lewis because Lewis teaches that rapid wetting of wool can be achieved at room temperature with the bunte salts combined with surfactants. Furthermore, Benisek et al. and Lewis are both directed towards effectively providing shrink-resistance to wool fabrics.

Regarding the claimed limitation of 25-45%, since Benisek et al. clearly teach using the agent within wide limits for the benefit of shrink-resistance, one of ordinary skill would be motivated to add the instantly claimed concentration for additional shrink resisting properties.

Regarding the claimed limitations of laundry and washing or cleaning, the teaching of exhaustion or padding would provide the textiles with the requisite washing or cleaning as impurities would be removed during immersion and during the pickup during padding and the articles treated would meet the limitation of laundry. Furthermore the limitation of detergent is met since the detergent has not been defined by components and simply requires the surfactant and compound of formula (II).

8. Claims 37,46,47,49,50 and 55-57 are rejected under 35 U.S.C. 103(a) as obvious over Lewis (US 3,933,421).

Lewis teaches treating wool and cotton fabrics with compositions comprising bunte salts of formula (II) (column 3, lines 35-50) wherein m is at least 1, preferably 25 (column 2, lines 15-25), at concentrations of 0.1-15% on wool fibers (column 7, lines 20-35) wherein the composition further comprises a surfactant (column 8, lines 35-50) and is aqueous (column 8, lines 20-25). Application of an aqueous solution of the bunte salt and surfactant by padding or exhaustion meets the claimed limitation of washing or cleaning (column 7, lines 55-65). Lewis further teaches using room temperature or temperatures of 10-60°C (column 9, lines 30-40) and drying (column 17, lines 15-25).

Lewis does not teach all the instantly claimed embodiments in a single example and are silent as to reduced pilling.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the select the instantly claimed components from the teachings of Lewis because Lewis teach these methods and components as effective in providing wool fabrics with shrink resistance. Furthermore, air drying of the fabrics would be obvious after they are treated. Regarding the reduced pilling limitation, one of ordinary skill would expect similar fabrics treated with similar chemical compositions by similar method steps would be provided with similar benefits to the fabrics by the chemical composition.

Regarding the claimed limitations of laundry and washing or cleaning, the teaching of exhaustion or padding would provide the textiles with the requisite washing

or cleaning as impurities would be removed during immersion and during the pickup during padding and the articles treated would meet the limitation of laundry. Furthermore the limitation of detergent is met since the detergent has not been defined by components and simply requires the surfactant and compound of formula (II).

### ***Response to Arguments***

9. Applicant's arguments filed regarding Lewis alone or in view of Benisek have been fully considered but they are not persuasive. Applicant argues that Benisek does not teach the treatment of formed consumer articles which is applicant's definition of laundry. The examiner respectfully disagrees and argues that the limitation of textile materials and fabric meets the limitation of laundry because they are articles made of textile fibers which have been washed in the instantly claimed composition. Regarding the claimed limitations of laundry and washing or cleaning, the teaching of exhaustion or padding would provide the textiles with the requisite washing or cleaning as impurities would be removed during immersion and during the pickup during padding and the articles treated would meet the limitation of laundry. Furthermore the limitation of detergent is met since the detergent has not been defined by components and simply requires the surfactant and compound of formula (II).

Applicant further argues that Benisek does not recognize the reduced pilling and does not teach drying at the temperatures of 50-80°C which are typical, but rather teaches curing at higher temperatures of 14-150°C. Similar arguments are presented for Lewis. The examiner respectfully argues that a reduction of pilling would be expected

from treating similar textile fibers with similar compositions comprising similar components. This reduced pilling property would be a result of the interaction of the fibers with the chemical in the treatment composition and would obviously occur. Regarding the curing, the claims do not prohibit the presence of curing and have not defined the temperature of drying, therefore the curing temperatures meet the limitation of drying. Benisek additionally teaches drying before curing (column 4, lines 25-30) and Lewis teaches drying (column 17, lines 15-25). Applicants arguments that the highly acidic process limitations of Benisek and Lewis and the curing temperatures would destroy "laundry" are not supported. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AMINA KHAN whose telephone number is (571)272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/  
Primary Examiner, Art Unit 1796

/Amina Khan/  
Examiner, Art Unit 1796  
November 17, 2009